



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No.: 09/785,123
Filing Date: February 16, 2001
Applicant: Jason Sodergren
Group Art Unit: 2141
Examiner: Kristie D. Shingles
Title: MULTI-PROTOCOL ADAPTER FOR IN-VEHICLE AND
INDUSTRIAL COMMUNICATIONS NETWORK
Attorney Docket: DEA-00002

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

This is a Reply Brief in response to the Examiner's Answer mailed June 23, 2008, to which a timely response is due by August 23, 2008.

Response To Examiner's Answer

I. Double Patenting Rejection of Claims 1, 4, 9, and 12-16 as Being the Same Invention as U.S. Publication No. 2005/0083965

In determining whether or not a statutory basis for a double patenting rejection exists "[a] reliable test for double patenting under 35 U.S.C. § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent." MPEP 804, *citing In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). In other words, is there an embodiment of the invention that falls within the scope of one claim, but not the other. *Id.*

Applicant's Appeal Brief applies the above test to show how the claims of the present application can be literally infringed without literally infringing the claims of the '965 application. The Examiner's answer does not give any deference to the test for determining statutory double patenting under 35 U.S.C. § 101. Instead the Examiner's Answer does a side-by-side comparison of the claims of the '965 application compared to the claims of the instant application which does not do more than outline the differences between the two different claims sets. There is not application of the test required by the MPEP. As such, in light of the above arguments, Applicant maintains that the double patenting rejection with respect to claims 1, 4-9 and 12-16 should be removed.

Claim Rejections Under 35 U.S.C. § 103

With regard to rejected independent claims 1 and 4, Applicant submits that both claims contain the language "an integrated CPU including an embedded operating system, said operating system including software interface modules

and device drivers ..." The Examiner's answer relies upon Abraham '842 to teach this particular element of the rejected claims. More specifically, the Examiner's answer indicates that this particular element can be found at Col. 3, Lines 10-18, Col. 9, Line 5 - Col. 10, Line 2. Applicant continues to maintain that Abraham '842 does not teach or suggest an integrated CPU having an embedded operating system with the operating system including software interface modules and device drivers. An operating system implies that code is running on a machine but an application can be written and loaded onto the machine. See the specification and drawings of the instant application at paragraphs 0046, 0095, 0114 and Figs. 1 and 2.

The Examiner's answer does not point to where Abraham '842 specifically teaches a CPU with an embedded operating system. The Abraham '842 patent essentially teaches a router for connecting together multiple CPUs that communicate with different protocols. The connections are carried out using modules or cards which provide a connection between a specific type of medium and the concentrator and are referred to as media distribution modules. See *Col. 9, Lines 14-17*. The specification of Abraham '842 teaches that "[t]he media distribution modules 120 are LAN media connection cards that implement a particular protocol. The modules 120 include ports 119 for connection to a specific medium 121. *Col. 10, Lines 18-21*. Applicant submits that the media modules are not an integrated CPU having an embedded operating system that includes software interface modules and device drivers.

Abraham '842 also teaches a hub management architecture that has an agent 182 that sends control signals to the other agents and the media modules. See Col. 17, lines 14-15. There is nothing in Abraham '842 that teaches or suggests that the hub management is an embedded operating system that implies that code is running on a machine but an application can be written and loaded onto the machine. To the contrary an agent as understood by a person of skill in the art is a software program that is automatically implemented and does not function like an operating system that allows written code applications to be loaded. Therefore, Abraham '842 does not teach or render obvious a CPU having an embedded operating system as set forth in rejected claims 1 and 4 of the present application. Furthermore the Examiner's answer does not state where Richter and Takahashi fill the void left by Abraham '842, nor can Applicant see where the combination would fill the void left by the proposed combination.

With regard to rejected dependent claims 6-9 Applicant maintains that these claims would also be allowable by virtue of their dependency on an independent claim which Applicant maintains is allowable over the proposed combination.

With regard to the rejection of claims 12-14 in view of the proposed combination of Abraham '842 in view of Richter '885, in view of Takahashi '827 and further in view of Cambron '027, these claims depend directly or indirectly on independent claim 1. The Examiner's answer relies upon Cambron '027 for the purpose of teaching an on-board web server. Applicant reiterates the argument made above and maintains that Abraham '842 in view of Richter '885, in view of Takahashi '827 fail to teach or suggest a CPU having an embedded operating

system as required by independent claim 1 of the present application.

Furthermore the Examiner's answer does not state where Cambron '027 fills the void left by Abraham '842 in view of Richter '885, in view of Takahashi '827, nor can Applicant see where the combination would fill the void left by the proposed combination. Thus Applicant submits that rejected claims 12-14 are allowable over the proposed combination of references.

With regard to the rejection of claims 15 and 16 in view of the proposed combination of Abraham '842 in view of Richter '885, in view of Takahashi '827 and further in view of Reul '027, these claims depend directly or indirectly on independent claim 1. The Examiner's answer relies upon Reul '027 for the purpose of teaching the limitations of claims 15 and 16. Applicant reiterates the argument made above and maintains that Abraham '842 in view of Richter '885, in view of Takahashi '827 fail to teach or suggest a CPU having an embedded operating system as required by independent claim 1 of the present application. Furthermore the Examiner's answer does not state where Reul '027 fills the void left by Abraham '842 in view of Richter '885, in view of Takahashi '827, nor can Applicant see where the combination would fill the void left by the proposed combination. Thus Applicant submits that rejected claims 12-14 are allowable over the proposed combination of references.

With regard to the rejection of claim 5 in view of the proposed combination of Abraham '842 in view of Richter '885, in view of Takahashi '827 and further in view of Liebl '917, these claims depend directly or indirectly on independent claim 1. The Examiner's answer relies upon Liebl '917 for the purpose of teaching the limitations of claim 5. Applicant reiterates the argument made

above and maintains that Abraham '842 in view of Richter '885, in view of Takahashi '827 fail to teach or suggest a CPU having an embedded operating system as required by independent claim 1 of the present application. Furthermore the Examiner's answer does not state where Liebl '917 fills the void left by Abraham '842 in view of Richter '885, in view of Takahashi '827, nor can Applicant see where the combination would fill the void left by the proposed combination. Thus, Applicant submits that rejected claim 5 is allowable over the proposed combination of references.

Conclusion

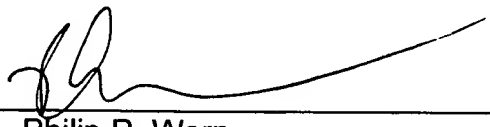
In conclusion Applicant notes that none of the proposed combination of references cited by the Examiner render the pending claims of the present application obvious. Allowance of the pending claims is respectfully requested.

Please send all future correspondence relating to this application to Warn Partners, P.C., P.O. Box 70098, Rochester Hills, MI 48307.

Respectfully submitted,

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Dated: Aug 25, 2008

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